

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 808/1997

**LIYAKAT KHAN
v
RAM SINGH & OTHERS**

DATE OF JUDGMENT: 4th APRIL, 2007.

Hon'ble Mr. Justice R. S. Chauhan

**Mr. Intezar Ali for the appellant.
Mr. T.P. Sharma for the respondents.**

By Court:

This appeal challenges the award dated 3.4.96 passed by the Motor Accident Claims Tribunal, Jaipur City, Jaipur wherein the appellant has been granted a compensation of only Rs. 43,000/-. Hence this appeal for enhancement.

In a nutshell, the facts of the case are that on 1.10.89 the appellant was returning in an autorikshaw from Jaipur to Amer, alongwith few other persons. Around 9.00 P.M. a truck, bearing Registration No. RRF 5859, being driven rashly and negligently, came from the opposite side and hit the autorikshaw. Consequently, while the autorikshaw driver expired, the appellant suffered grievous injuries in the shape of fracture of the right femur bone and the fracture of the nosel bone. He also sustained a cut over the right eye. In order to set the right femur bone, a steel rod had to be

inserted in his leg. For this purpose the appellant was hospitalised for forty days. Because of the injuries, he can neither walk normally, nor sit properly. Therefore, he has become physically challenged for the rest of his life. Hence the appellant had filed a claim petition for Rs. 2,20,000/-. The respondents filed their reply and denied their liability. On the basis of the pleadings, the learned Tribunal framed three issues. In order to support his case, the appellant examined seven witnesses. The respondents did not examine any witness on their behalf. After going through the oral and documentary evidence, as stated above, the learned Tribunal awarded a claim of only Rs. 43,000/-.

Mr. Intezar Ali, the learned counsel for the appellant, has vehemently argued that only pecuniary benefits have been granted to the appellant. However, non-pecuniary benefits have not been granted by the learned Tribunal. In order to buttress his argument he has relied on the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. & Ors. (AIR 1995 SC 755), Smt. Salma Bano Vs. Anand Singh & Ors. (2001 (2) T.A.C. 164 (Raj.)) and on the case of Bhanwar Lal Verma Vs. Sharad Tholia & Ors. (SBCMA No. 799/1995 decided on 18.11.2006).

On the other hand, Mr. T.P. Sharma, the learned counsel for the respondent No.3, has argued that in the year 1996 a

compensation of Rs. 43,000/- was more than just and reasonable. Therefore, he has supported the impugned award.

We have heard both the learned counsels and have perused the impugned award.

A bare perusal of the impugned award clearly reveals that the non-pecuniary factor as enunciated in the case of R.D. Hattangadi (supra) have not been considered by the learned Tribunal. In the aforementioned case, the Hon'ble Supreme Court held as under :-

“9. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

Considering the fact that the appellant was a young man of thirty years old at the time of the accident, considering the fact that he became physically challenged and had the entire life before him, compensation for mental and physical shock, pain and suffering, loss of amenities of life i.e. inability to walk, run or sit, the inconvenience, the frustration, the disappointment suffered by him and the discomfort suffered by him should have been compensated by the learned Tribunal. However, in the present case, the learned Tribunal has totally ignored these factors. Of course, a body that has been damaged can never be restored to its pristine beauty. But, a monetary compensation can certainly lessen the pain and agony that the appellant is bound to suffer throughout his life. Therefore, keeping these non-pecuniary factors in mind, this court is inclined to enhance the compensation from Rs. 43,000/- to Rs. 60,000/- alongwith an interest of 9% per annum. Since the interest granted by the Tribunal was 12% and since the present rate of interest is 6%, as a via media this court is inclined to grant an interest of 9% per annum. In case the compensation amount of Rs. 43,000/- has already been paid to the appellant, the same shall be adjusted against the enhanced amount. The learned Tribunal is directed to recover the remaining amount from the respondent No.3 within a period of two months and to ensure that the said amount is handed over to the appellant within the said period of two months.

(R.S. CHAUHAN) J.

MRG.